IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.216 OF 2005

M/s.Ispat Industries Ltd. ... Petitioners.

vs.

M/s.Baby Samuel & Co. .... Respondents.

Mr.Sham Diwan with Narayan Sahoo i/b. S.K.Srivastav & Co. for Petitioners.

Mr.V.J.Makhija with V.J.Shah i/b. L.C.Tolat & Co., for Respondents.

CORAM: D.K.DESHMUKH,J.

DATED: 18th July,2005

P.C.:-

1. By this petition, the petitioners challenge the interim award dated 22nd March,2005 made by the Arbitral Tribunal. It is only paragraph no.3 of that Award which is relevant and material which reads as under:-

> "(3) In the circumstances, we direct that Respondents to pay over to the Claimants amounts

> in respect of items in respect of which TDS has been deducted from payments due and payable to the Claimants in respect of contracts arising between the parties namely M/s.Baby Samuel & Co. and Ispat Industries Ltd. i.e. Contracts contained in sub para (V)(i) and sub para (V)(iv) of the Arbitration Application no.34 of 2000. The aforesaid TDS has been credited in the treasury in the name of M/s.Baby Samuel & Co."

Perusal of this paragraph no.3 makes following things clear:-

(i) The Arbitral Tribunal has not disclosed any reasons for making this Award.

(ii) It does not show that the Arbitral Tribunal has applied its mind to the defence that was raised in the reply filed by the petitioners.

(iii) The Award does not indicate what would be the amount to be paid pursuant to the Award.

2. The learned Counsel appearing for Respondents states that though the Award does not disclose any reasons, the Award need not be set aside. Instead, this Court exercising its power under sub section (4) of Section 34 of the Arbitration & Conciliation Act,1996, should adjourn the present proceedings and give the Arbitral Tribunal

an opportunity to resume the arbitral proceedings so as to eliminate the ground for setting aside the arbitral Award. On that request, I heard the learned Counsel for the petitioners. In my opinion, the course laid down under sub-section (4) of Section 34 of the Act will not serve the interest of justice in the present case. Perusal of the statement of claim shows that in the statement of claim, a prayer has been made for interim Award. By prayer clause (b) of the statement of claim interim award in the sum of Rs.1,59,68,097/- is claimed. Admittedly, this claim includes the claims made by some companies against which the same arbitral tribunal, by order made on the same date held that they are not parties to the present proceedings. Therefore, the amount quoted in prayer clause (b) cannot be said to be the correct amount in view of the order made by the Arbitral Tribunal. Therefore, the inquiry into the aspect whether as to how much is the amount for which the interim award can be claimed by the respondents, will have to be made. The interim award is claimed by the respondents on the assumption that in the account books maintained by the petitioners these amounts have been admitted by the petitioners to be due from the petitioners to the respondents. Perusal of statement of defence shows that the petitioners have denied that this is an admission. The petitioners have set up the elaborate defence based on the accounting practice which according to them, is followed by them. Therefore, in my opinion, in view of the elaborate

defence on facts raised by the petitioners, the petitioners will have to be given an opportunity of leading documentary and oral evidence in support of their defence, and the evidence if led may in fact wipe out the entitlement of the respondents to interim award. One more aspect according to me which needs to be seen is that the interim Award made is not like an interim order which is required to be made subject to final award that may be made in the proceedings. The interim Award operates on its own and therefore, the interim Award is also final, in so far as the points considered therein and the directions issued therein are concerned. The Arbitral tribunal has itself by subsequent order permitted the parties to lead oral evidence, in my opinion, therefore, considering the dispute raised in relation to the entitlement of the respondents to claim interim award, the interim award could not have been made without granting parties an opportunity of leading evidence both documentary and oral. For all these reasons, therefore, in my opinion, it will not be appropriate to follow the course laid down by sub-section (4) of Section 34 of the Act in this case. In my opinion, the following order would meet the ends of justice:-

(i) The interim award impugned in this petition is set aside.

(ii) However, the respondents shall be at liberty to apply for interim award before the Arbitral Tribunal at appropriate stage.

Petition disposed of.